



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v. Canada Employment Insurance Commission*, 2018 SST 727

Tribunal File Number: AD-18-388

BETWEEN:

B. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: July 11, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, B. B. (Claimant), left her employment and moved to a larger centre where she could further her education and where she hoped to locate additional resources that would allow her son to succeed in school. The Respondent, the Canada Employment Insurance Commission (Commission), denied her application for Employment Insurance benefits, finding that she voluntarily left her employment without just cause. The Claimant requested a reconsideration, but the Commission refused to reconsider on the basis that her application was late. She appealed this decision to the General Division of the Social Security Tribunal, which found that the Commission did not exercise its discretion judicially and further found that she had a reasonable explanation for the delay and a continuing intention to seek reconsideration. The General Division allowed the Claimant's appeal to grant the extension of time to seek a reconsideration.

[3] As a result of the General Division decision, the Commission reconsidered its original decision. However, the reconsideration decision maintained that the Claimant was disqualified from receiving benefits because she did not have just cause for leaving her employment. The Claimant appealed once again, and the General Division dismissed her appeal. She now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. She has not raised an arguable case that the General Division failed to observe a principle of natural justice or that it made an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

ISSUES

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice or that it refused to exercise its jurisdiction by failing to consider whether the Commission's decision was fair?

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice or that it exceeded its jurisdiction by dismissing the Claimant's appeal after a prior General Division decision had decided in her favour?

[7] Is there an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it?

ANALYSIS

General Principles

[8] The Appeal Division's task is more restricted than that of the General Division. The General Division is empowered to consider and weigh the evidence that is before it and to make findings of fact. The General Division then applies the law to these facts in order to reach conclusions on the substantive issues raised by the appeal.

[9] By way of contrast, the Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the grounds of appeal in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) and set out below:

(a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record, or;

(c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[10] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[11] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.¹

Is there an arguable case that the General Division failed to observe a principle of natural justice or that it refused to exercise its jurisdiction by failing to consider whether the Commission's decision was fair?

[12] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised a concern with any action or procedure that could have affected her right to be heard or to answer the case, nor has she suggested that the General Division member was biased or had prejudged the matter. Therefore, there is no arguable case that the General Division failed to observe a principle of natural justice.

[13] I appreciate that the Claimant believes that the Commission's decision was unfair and that she disagrees with the conclusion that the General Division reached. However, the substantive issue before the General Division was whether the Claimant voluntarily left her employment without just cause. The General Division addressed the issue and made its decision based on the law. The Claimant may believe that the General Division did not address what she calls the fairness of the Commission decision, but the General Division did address the legality of the Commission decision with regard to the requirements of the *Employment Insurance Act* (Act) and its interpretation by the courts. There is no arguable case that the General Division refused to exercise its jurisdiction.

¹ *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

Is there an arguable case that the General Division failed to observe a principle of natural justice or that it exceeded its jurisdiction by dismissing the Claimant's appeal after a prior General Division decision had decided in her favour?

[14] The Claimant is concerned that even though the General Division did allow her appeal, the Commission still did not agree that she should qualify for benefits. However, at the Claimant's first hearing, the only issue before the General Division was whether the Claimant should have been permitted more time to bring her request for reconsideration to the Commission. The General Division member did not have jurisdiction to consider whether the Claimant qualified to receive benefits.

[15] The qualification issue was properly before the General Division for the first time only in the Claimant's second appeal from the Commission's reconsideration decision that denied the Claimant benefits. It is this second General Division decision, dated May 15, 2018, that is the subject of this leave application.

[16] The first General Division decision concerned a completely different issue. The fact that the General Division agreed that the Claimant should be permitted more time to make her reconsideration request does not mean that it accepted that the Commission's original decision had been wrongly decided, and it does not require that the Commission change its decision when it reconsiders. The effect of the General Division decision was to require the Commission to follow through the reconsideration process and issue a reconsideration decision. However, the General Division decision did not prevent the Commission from maintaining its original decision when it reconsidered.

[17] There is nothing in the first General Division decision that would prevent the General Division in the second appeal from considering or dismissing the appeal of the reconsideration decision. The existence of the earlier General Division decision does not support an arguable case that the second General Division failed to observe a principle of natural justice or that it exceeded its jurisdiction.

Is there an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it?

[18] Paragraph 29(c) of the Act states that “just cause for voluntarily leaving an employment or taking leave of an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all of the circumstances”.

[19] The General Division found that the Claimant voluntarily left her employment because she had a choice as to whether to keep her employment or leave it, and she chose to leave it. The General Division also found that the Claimant did not have just cause for leaving. It considered the Claimant’s explanation that she had left her employment because she wished to upgrade her training and because her son would benefit from additional resources that were not available in the community where the Claimant was employed. However, the General Division found that she had reasonable alternatives to leaving, including delaying her departure until she obtained new employment, was approved to return to school, or had her son enrolled in appropriate programming in the community to which she moved.

[20] The Claimant did not suggest that the General Division ignored or misunderstood her evidence in relation to her reasons for leaving or the availability of reasonable alternatives, nor did she point to any particular finding that could be described as perverse or capricious.

[21] In keeping with the direction of the court in such decisions as *Karadeolian v. Canada (Attorney General)*,² I have also reviewed the record to determine whether any other evidence may have been misunderstood or overlooked. I was unable to identify an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the evidence before it, as would be required under s. 58(1)(c) of the DESD Act.

[22] There is no reasonable chance of success on appeal.

² See for example, *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

CONCLUSION

[23] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	B. B., self-represented
-----------------	-------------------------